



INDIANA COURT OF APPEALS  
ORAL ARGUMENT AT A GLANCE  
WEST LAFAYETTE JR./SR. HIGH SCHOOL —  
WEST LAFAYETTE



***Michael W. George v. State of Indiana***

**Appeal from:**  
Shelby Superior Court,  
The Honorable Jack Tandy,  
Judge

**Oral Argument:**  
Tuesday, January 27, 2009  
10:00-11:00 a.m.  
20 minutes each side

**Criminal Law**

Today we will discuss whether a warrantless search of Michael George's vehicle violated either the Fourth Amendment of the United States Constitution or Article I, Section 11, of the Indiana Constitution.

**CASE SYNOPSIS**

**Facts and Procedural History**

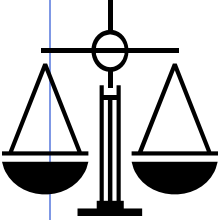
At approximately 12:15 a.m. on February 26, 2007, Deputy Michael Cleveland of the Shelby County Sherriff's Department stopped George's vehicle for speeding on a rural stretch of highway near the intersection of State Road 9 and County Road 650 North in Shelby County. A check of George's identification revealed that his driver's license was suspended and that he had been convicted in 2006 of operating a vehicle with a suspended license. Although he could have arrested George on the basis of this information, Deputy Cleveland chose instead to issue George a citation for operating a vehicle with a suspended license. Because George was unable to drive and there were no passengers in the vehicle, Deputy Cleveland arranged to have George's vehicle im-

pounded. Out of courtesy, Deputy Cleveland also offered to give George a ride to his destination. George accepted, and, around the time the two departed, Deputy Darren Chandler arrived to search the vehicle and inventory its contents before impounding it.

While searching a compartment on the driver's side door of the vehicle, Deputy Chandler discovered a lidless condom box. Inside the box was an amber-colored, translucent pill bottle that lacked a prescription label. Suspecting the pill bottle might contain contraband, Deputy Chandler sent a message to Deputy Cleveland's vehicle's computer stating he may have discovered "narcotics." Also around this time, Deputy Chandler opened the pill bottle and emptied its contents. Inside the pill

*George v. State of Indiana*

## CASE SYNOPSIS



bottle were eight round tablets, each displaying the same inscription. Deputy Chandler could not determine whether the tablets were contraband, so he contacted a Shelbyville pharmacist and gave the pharmacist a description of them. The pharmacist searched a database of consumer drugs and determined the tablets were thirty-milligram doses of morphine. Deputy Chandler relayed this information to Deputy Cleveland, who placed George under arrest.

The State later charged George with possession of a controlled substance. After denying George's request to suppress evidence obtained during Deputy Chandler's vehicle search, the trial court conducted a bench trial, hearing testimony from Deputies Cleveland and Chandler, as well as the pharmacist, and admitting the items obtained from the search into evidence. Based on this evidence, the trial court found George guilty as charged.

### Parties' Arguments

#### I. Fourth Amendment Violation

The Fourth Amendment states, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." George argues initially that the search of his vehicle was unreasonable because it was conducted without a warrant. The State concedes the search was conducted without a warrant, but argues the search was nevertheless reasonable because it qualified as an "inventory search," which is a well-recognized exception to the warrant requirement. George counters that even assuming the search qualified as an inventory search, Deputy Chandler's act of contacting the pharmacist to determine the chemical composition of the tablets rendered the

search unreasonable. The State attempts to rebut this point by arguing that the inventory search exception extends to Deputy Chandler's act of contacting the pharmacist.

#### II. Article I, Section 11, Violation

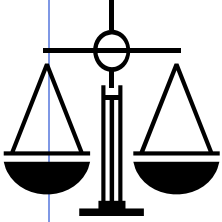
Article I, Section 11, of the Indiana Constitution is nearly identical to the Fourth Amendment; it states, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized." Despite similar language to the Fourth Amendment, determining whether a police practice violates Article I, Section 11, involves a slightly different analysis. Specifically, the Indiana Supreme Court has stated the burden is on the State to show that the police practice was reasonable under the totality of the circumstances. Focusing on Deputy Chandler's act of contacting the pharmacist, the State argues this conduct was reasonable because Deputy Chandler could not determine the tablets' chemical composition. George counters that Deputy Chandler's conduct was unreasonable because, instead of contacting the pharmacist, he should have obtained a warrant authorizing him to determine the tablets' chemical composition.

*George v. State of Indiana*

## CASE SYNOPSIS

### Glossary:

a warrant.



**Search:** A “search” has occurred within the meaning of the Fourth Amendment when a police officer infringes on a person’s reasonable expectation of privacy. Here, the parties agree that Deputy Chandler conducted a “search” when he inventoried the contents of George’s vehicle.

**Impound:** Seizing and retaining personal property in legal custody, typically for the purposes of keeping the property safe or preserving it as evidence.

**Controlled Substance:** Indiana law lists many drugs as controlled substances, and morphine is one of them. It is illegal for a person to knowingly or intentionally possess a controlled substance without a valid prescription.

**Suppress:** If a person charged with a crime believes a police officer has unlawfully obtained evidence against him, the person may request the trial court to disregard, or “suppress,” that evidence. If the trial court grants the request, the evidence may not be used in determining whether the person is guilty of the crime.

**Bench Trial:** Generally, when a person is charged with a crime, he may choose to have either a judge or a jury determine whether he is guilty. When the person chooses a judge, the trial is referred to as a “bench trial.”

**Warrant:** A document issued by a judge authorizing a police officer to search a particular area, such as a vehicle or a home, for evidence relating to a particular crime. The Fourth Amendment requires “probable cause” before a judge may issue

**Inventory Search:** When a vehicle is lawfully impounded, a police officer is permitted to conduct a warrantless search of the vehicle for the purpose of inventorying the vehicle’s contents. This inventorying process is designed to protect an owner’s property while it is in the custody of the police, to insure against claims of lost, stolen or vandalized property, and to guard the police from danger.

**Exceptions to the Warrant Requirement:** A police officer is not always required to obtain a warrant before conducting a search. Examples beyond the inventory search exception include the “search incident to arrest” exception, which permits a police officer to search a person’s pockets and other areas that might contain a concealed weapon or contraband when the officer has lawfully arrested the person.

**Probable Cause:** Although lacking a precise definition, the United States Supreme Court has described “probable cause” as the existence of facts and circumstances that would lead a man of reasonable prudence to believe that contraband or evidence of a crime will be found in a particular place.

## TODAY'S PANEL OF JUDGES

### **Hon. John G. Baker (Monroe County), Chief Judge, Presiding**

- Judge of the Court of Appeals since June 1989

Chief Judge **John G. Baker** is originally from Aurora in Dearborn County and now resides in Boone County. Previously he lived in Monroe County for 35 years. Since June 1989, he has served as a Judge of the Indiana Court of Appeals representing the First District and has authored more than 3,000 majority opinions. Prior to becoming an appellate court judge, he served as county court and superior court judge for 13½ years in Bloomington, disposing of more than 15,000 cases.

Judge Baker graduated from Culver Military Academy and received his A.B. degree from Indiana University in 1968 in History and his J.D. from the Indiana University School of Law — Bloomington in 1971. He received his LLM in Judicial Process from the University of Virginia in 1995. Before assuming the trial bench, he was a partner in the firm of Baker, Barnhart and Andrews in Bloomington and was a Captain in the U.S. Army Reserves.

Since 1980, Judge Baker has taught as an adjunct professor at Indiana University's School of Public and Environmental Affairs and for three years the School of Law in Indianapolis. In addition, Judge Baker has served on the faculties of the Indiana Judicial College, Indiana Continuing Legal Education Forum,

and the National Institute of Trial Advocacy.

His professional associations include the American, Indiana State, Monroe County and Indianapolis Bar Associations. For the latter, he served as Vice-President in 1995. He has been a member of the Indiana Judges Association's Board of Managers continually since 1979 and served as its President from January of 1987 through June of 1989.

Judge Baker has been active in community and civic affairs as well. In addition to his church, YMCA, and other similar organizations, Judge Baker has been active in Boy Scouts of America since his youth and was awarded the rank of Eagle Scout.

Judge Baker, who was retained on the Court by election in 1992 and 2002, lives near Zionsville with his wife, Margaret (Peggy) Paul Baker. They have five children and, so far, five grandchildren.

### ***"Appeals on Wheels"***

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began statewide just prior to the Court's centennial in 2001.

The Court of Appeals has held over 200 "on the road" cases since early 2000.

Sites for traveling oral arguments are often law schools, colleges, high schools, and county courthouses.

## TODAY'S PANEL OF JUDGES

### **Hon. Margret G. Robb (Tippecanoe County)**

#### **• Judge of the Court of Appeals since July 1998**

**Margret G. Robb** was appointed to the Indiana Court of Appeals in July 1998 by Gov. Frank O'Bannon. She holds a B.S. and M.S. in Business Economics from Purdue, and is a 1978 Magna Cum Laude graduate of Indiana University School of Law - Indianapolis.

Prior to joining the Court she was engaged in the general practice of law for 20 years in Lafayette and was a Chapter 11, 12 and a Standing Chapter 7 Bankruptcy trustee for the Northern District of Indiana; and the Federal Advisory Committee for the expediting of Federal Litigation. She was a registered family and civil law mediator and served as a Tippecanoe County Deputy Public Defender. She chairs the Supreme Court Task Forces on Family Courts, the development of Trial Court Local Rules, and is involved in several projects to benefit the Indiana legal system. She has also served as a member of the Indiana Board of Law Examiners, the Governance Committee of the Supreme Court IOLTA (Interest On Lawyers' Trust Accounts) Committee; the Federal Advisory Committee on Local Rules for the Federal Court for the Northern District of Indiana; and Federal Advisory Committee for the expediting of Federal Litigation.

Judge Robb has held numerous Board positions for and been an officer for the Indiana State Bar Association, Indiana Bar Foundation, Tippecanoe County Bar Association, Indianapolis Bar Association, Indianapolis Bar Foundation, American Bar Foundation, National Association of Women Judges, Indiana University School of Law at Indianapolis Alumni Asso-

ciation, and speaks frequently on legal topics for attorneys and other judges.

Judge Robb was Founding Chair of the Governor Otis Bowen's Commission on the Status of Women; was a recipient of the 1993 Indiana State Bar Association's "Celebrating 100 Years of Women in the Legal Profession" award; the 2001 Maynard K. Hine distinguished alumni award, given in recognition of support and service to IUPUI and Indiana University; the 2004 Bernadette Perham "Indiana Women of Achievement" Award, bestowed by Ball State University in honor of one of their outstanding professors; the 2005 Indiana State Bar Association's Women in the Law Recognition Award; and the 2006 Tippecanoe County YWCA Salute to Women "Women of Distinction" Award.

Judge Robb, who was retained on the Court of Appeals by election in 2000, lives in West Lafayette with her husband, a Professor of Communication at Purdue (M.A. and Ph.D., Indiana University). Their son, Douglas, a graduate of the U.S.N.A., recently embarked on his second deployment.



## TODAY'S PANEL OF JUDGES

### **Hon. Cale A. Bradford (Marion County)**

- Judge of the Court of Appeals since August 2007

**Cale J. Bradford** was appointed to the Court of Appeals by Governor Mitch Daniels and took his seat on August 1, 2007.

Prior to his elevation to the Court of Appeals, Judge Bradford served for more than 10 years as Judge of the Marion Superior Court, seven years in the criminal division and three in the civil division. He was twice elected presiding judge by his colleagues.

During this tenure, Judge Bradford chaired the Marion County Criminal Justice Planning Council, a group of local elected and appointed officials who recommended ways to improve the county's response to criminal justice problems, including jail overcrowding, staffing, and budget issues. His efforts led to the end of 30 years of federal oversight of the Marion County Jail and to security improvements at the county's Juvenile Detention Center.

Before joining the bench, Judge Bradford served in the Marion County Prosecutor's Office for two years, overseeing a staff of more than 100 attorneys. For five years, he was an Assistant United States Attorney for the Southern District of Indiana, prosecuting major felony drug trafficking cases. He engaged in the private practice of law from 1986 to 1991, and served as both a deputy prosecutor and public defender during his career.

A native of Indianapolis, Judge Bradford received a B.A. in labor relations and personnel management from Indiana University-Bloomington in 1982 and his J.D. from Indiana University-Indianapolis in 1986. He is the Court of Appeals' liaison to the Indiana Judges Criminal Instructions Committee, which provides guidance to judges on jury instructions in criminal cases, and a former member of both the Indiana Judges Criminal Policy Committee and the Board of Directors of the Indiana State Judicial Conference. He is a Distinguished Fellow of the Indianapolis Bar Association and has taught ICLEF seminars on trial practice for more than 10 years. From 2005 to 2007, Judge Bradford hosted "Off the Bench with Judge Cale Bradford," a legal commentary program on Marion County's government access network. He also served on the Judicial Technology and Automation Committee (JTAC), helping to draft the state judiciary's policies on technology and electronic case management.

Judge Bradford is a former director of Indianapolis's John P. Craine House, a residential alternative to incarceration for women offenders with pre-school-aged children. He is a member of the Lawrence Youth Football League Advisory Board of Directors and the Lawrence Men's Soccer Booster Club. He and his wife, a full-day kindergarten teacher, have five children.

## ATTORNEYS FOR THE PARTIES

### **For Appellant, George:**

Stephen Gerald Gray  
120 East Market Street  
Indianapolis



**Stephen Gray** began his practice of law in 1982 after graduating law school from IUPUI in Indianapolis. Mr. Gray earned an engineering degree from Purdue University in 1973, and in earlier years litigated a variety of cases from products liability to wrongful death. "The past ten years the primary focus of my law practice has been in criminal law and appellate work. The majority of my cases are in central

Indiana, but I enjoy traveling the State when presented with an interesting legal issue." This will be Mr. Gray's second oral argument before the Court of Appeals in addition to his two oral arguments before the Indiana Supreme Court.

### **For Appellee, State of Indiana:**

Mellisica Flippen  
Attorney General's Office  
Indianapolis

Mellisica Flippen is a native Hoosier who hails from Fort Wayne, Indiana. She obtained her B.A. in 1994 from Indiana University in Bloomington, Indiana. Following graduation, Mellisica moved to Indianapolis and worked as an adult probation officer while she attended graduate school. In 1998, Mellisica obtained her Masters degree in Social Work from I.U. School of Social Work at Indianapolis. After working as a medical social worker for a short time, Mellisica began law school in 2000 at Indiana University School of Law at Indianapolis and obtained her J.D. in 2003. However, she contin-

ued to provide services to kinship families as a social worker until she was admitted to the Indiana Bar in 2007. Mellisica currently works for the Office of the Attorney General in the Appeals Division as a Deputy and also serves as Director of Victim Services. As a Deputy Attorney General, she represents the State in non-capital cases on direct appeal. As the Director of Victim Services, she coordinates the Address Confidentiality Program and provides criminal appeal notification to victims throughout the state. This is Mellisica's first oral argument before the Court of Appeals.